



CONTRACT

(fee-for-goods or services contract with an individual, business, non-profit, or governmental entity of another state)

Begin Date January 01, 2019	End Date December 31, 2021	Agency Tracking # 34310-21119	Edison Record ID
Contractor Legal Entity Name Appriss Inc.			Edison Vendor ID 121147

Goods or Services Caption (one line only)
Tennessee Controlled Substance Monitoring Database Software and Services

Contractor <input checked="" type="checkbox"/> Contractor	CFDA #
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Funding —					
FY	State	Federal	Interdepartmental	Other	TOTAL Contract Amount
2019	\$405,177.50				\$405,177.50
2020	\$1,024,662.10	\$21,000.00			\$1,045,662.10
2021	\$716,685.33				\$716,685.33
2022	\$357,404.28				\$357,404.28
TOTAL:	\$2,503,929.21	\$21,000.00			\$2,524,929.21

Contractor Ownership Characteristics:

☐ Minority Business Enterprise (MBE):
☐ African American ☐ Asian American ☐ Hispanic American ☐ Native American

☐ Woman Business Enterprise (WBE)

☐ Tennessee Service Disabled Veteran Enterprise (SDVBE)

☐ Disabled Owned Business (DSBE)

☐ Tennessee Small Business Enterprise (SBE): \$10,000,000.00 averaged over a three (3) year period or employs no more than ninety-nine (99) employees.

☐ Government ☐ Non-Minority/Disadvantaged ☒ Other:

Selection Method & Process Summary (mark the correct response to confirm the associated summary)

☐ Competitive Selection

☒ Other ☐ Sole Source

Budget Officer Confirmation: There is a balance in the appropriation from which obligations hereunder are required to be paid that is not already encumbered to pay other obligations.

Valerie Oliver

Speed Chart (optional) HL00000587	Account Code (optional) 72203000
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**CONTRACT
BETWEEN THE STATE OF TENNESSEE,
DEPARTMENT OF HEALTH
AND
APPRISS INC.**

This Contract, by and between the State of Tennessee, Department of Health ("State") and Appriss Inc. ("Contractor"), is for the provision of Controlled Substance Monitoring Database (CSMD), as further defined in the "SCOPE." State and Contractor may be referred to individually as a "Party" or collectively as the "Parties" to this Contract.

The Contractor is a For-Profit Corporation
Contractor Place of Incorporation or Organization: Delaware
Contractor Edison Registration ID # 121147

A. SCOPE:

A.1. The Contractor shall provide all goods or services and deliverables as required, described and detailed below and shall meet all service and delivery timelines as specified by this Contract.

A.2. Definitions.

- a. "Active Sessions" is an active working session where communication is occurring between the State PMP User Application and devices being used by Users
- b. "API" means Application Program Interface
- c. "APRN" means Advance Practice Registered Nurse
- d. "ASAP" means American Society for Automation in Pharmacy
- e. "Centers for Disease Control and Prevention (CDC)MME Conversion" morphine milligram equivalent calculation for the amount of a prescribed opioid as defined by the CDC
- f. "Centers for Medicare and Medicaid Services (CMS) Taxonomy" is a hierarchical code set that consists of codes, descriptions and definitions to categorize the type, classification and/or specialization of health care providers
- g. "Central Reporters" means individuals within a corporate structure identified to report controlled substance prescriptions on behalf of their corporate subsidiary, Dispensers, or an individual of a software company contracted by the Dispenser to report controlled substance prescriptions on behalf of Dispenser to the prescription monitoring program
- h. "Certified Registered Nurse Anesthetist" is an advanced practice registered nurse who specializes in the administration of anesthesia
- i. "CFC" means Customer First Center, which is the Appriss Technical Help Desk.
- j. "Change Order" means a formal request for an adjustment or enhancement of a system. A Change Order defines what needs to be accomplished and the effect of the proposed changes to the current project deliverables, schedule, and cost.
- k. "Clinical Risk Indicator (CRI)" means a visual, textual or graphical indicator used in the system to indicate to the user of the system the potential for this patient to be high risk determined by parameters set by the State.
- l. "Controlled Substance Monitoring Database (CSMD)" means an electronic repository that collects and maintains encrypted data on controlled substance prescriptions dispensed in

the State of Tennessee and generates reports on this data. This is the State Prescription Monitoring Program.

- m. "CSMD Director" means the director of the State's CSMD who administers, maintains, and directs the operation and function of the CSMD
- n. "CSV" means Comma Separated Value
- o. "DATA" means Drug Addiction Treatment Act
- p. "Data Collection Manual" is a document used by Dispensers that contains information related to definitions, explanations, processes and instructions regarding prescription data to be submitted to the State
- q. "Data Dictionary" means document that will catalog the organization, contents, and conventions of the databases. It shall include the names and descriptions and characteristics of all the various tables (records or entities) and their contents (fields) plus additional details, e.g., type and length of each data element. It shall document the relationship between all tables.
- r. "DDS" means Dentist
- s. "DEA" means Drug Enforcement Agency
- t. "DEA Dispenser" is an individual or entity with a DEA number that reports dispensed prescriptions to the State PMP Data Collection Application
- u. "DEA Suffix" is an identifying number assigned to a prescriber by an institution when the institution's DEA number is used
- v. "Delegates" means licensed or unlicensed individuals who act as agents of their Supervisors, per the Prescription Safety Act of 2016.
- w. "Disaster" means a serious intentional or unintentional disruption of network and/or system functionality causing all or part of an organization's operations and/or computer services to be rendered unusable.
- x. "Disaster Recovery" means the procedures an organization will follow to maintain or quickly resume mission-critical functions following a disaster.
- y. "Disclaimer" is language in CRIs, reports, and other areas of the State PMP User Application and State PMP Data Collection Application to communicate the conditions, limitations and exceptions of the information presented
- z. "Dispenser" means a person who physically delivers a controlled substance to any person, institution or entity with the intent that it be consumed away from the premises on which it is dispensed.
- aa. "DO" means Osteopathic Doctor
- bb. "DPM" means Doctor of Podiatric Medicine
- cc. "DVM" means Doctor of Veterinary Medicine
- dd. "DWP" means DATA Waived Physician
- ee. Enhancement – new development / functionality requested by State that does not exist in current State PMP User Application or State Data Collection Application that vendor will need to provide estimate and timeline to complete

- ff. "ETL" means Extract, Transform, and Load
- gg. Existing functionality - Existing functionality or feature that, at no additional cost to the State, is serving its expected purpose (i.e., it's not broken) or meeting *critical* functionality to accomplish a particular task.
- hh. "FDA" means Food and Drug Administration
- ii. "FIPS" means Federal Information Processing Standards
- jj. Gap – functionality that exists in the current applications the Contractor provides to the State at the time of this Contract start date that would need to be developed in the Contractor's new version of the State PMP User Application or State Data Collection Application should the State migrate to the Contractor's new applications. Development of Gap items would be at no cost to the State.
- kk. "Healthcare Practitioner (for the purposes of this contract)" is any person licensed, registered, or otherwise permitted to prescribe, distribute, or dispense a controlled substance in the course of professional practice and Certified Registered Nurse Anesthetist (CRNA)
- ll. "Internet Protocol (IP) Address" is a numerical label assigned to each device connected to a computer network that uses the Internet Protocol for communication
- mm. "IS" means Information Source
- nn. "KPIs" means Key Performance Indicators
- oo. "MD" means Medical Doctor
- pp. "MME" means Morphine Milligram Equivalent
- qq. "NCPDP" means National Council for Prescription Drug Programs
- rr. "NDC" means National Drug Code
- ss. "NPI" means National Provider Identification
- tt. "NTP" means Narcotic Treatment Program
- uu. "OTech" means Optimum Technology; the organization who provided the current CSMD system to the State. This system was purchased and is currently maintained by Appriss, Inc.
- vv. "PA" means Physician Assistant
- ww. "Patient Consolidation ID, also known as Group ID" for the purposes of this contract it is an identifier assigned by the Contractor to identify patients whose prescription information contain common elements and by using an algorithm determine there is a high probability these different Patient IDs belong to a single patient
- xx. "Patient ID" for the purposes of this contract when prescription data is submitted from the Dispenser to State PMP Data Collection Application and the Contractor processes the data and assigns unique identifiers to patients associated with that data. If the patient information matches existing patient data associated to Patient ID in the State PMP Data Collection Application the new data will be associated to that Patient ID, otherwise a new Patient ID will be created in the State PMP Data Collection Application

- yy. "PDF" means Portable Document Format
- zz. "PHA" means Pharmacy Header
- aaa. "Pharmacist" means an individual health care provider licensed by a state to practice the profession of pharmacy
- bbb. "Pharmacist In Charge" means the supervisory pharmacist who has the authority and responsibility for compliance with laws and rules pertaining to the practice of pharmacy at the practice site of the pharmacist-in-charge
- ccc. "PMP" means Prescription Monitoring Program
- ddd. "PMPi" means Prescription Monitoring Program Interconnect
- eee. "Prescriber" – anyone in the medical profession authorized by law to prescribe drugs (= to write an order for medicine for a patient
- fff. "Prescriber Consolidation ID" for the purposes of this contract it is an identifier that will be assigned by the Contractor to identify a prescriber who possesses multiple DEA numbers
- ggg. "Production Environment" the environment where the application is put into operation for its intended use by end users
- hhh. Profession as used in the BRD refers to the individual's primary vocation identified by the individual to the State to obtain licensure (Examples: Medical Doctors, Osteopathic Doctors, Nurse, Podiatrist, etc.). This is not the individual's specialty (Examples: Anesthesiology, Internal Medicine, Family Medicine) or sub Specialty (Examples: Pain Management, Pediatric Cardiology).
- iii. "Remediation Plan" means a plan to remedy any problems or deficiencies that occur during the testing of Disaster Recovery.
- jjj. "Report Output" is defined as the results from a query run in either the State PMP Data Collection Application or the State PMP User Application that can be either viewed online or that generates a document that can be viewed or downloaded from the respective application
- kkk. "Role" means an identification in the application to identify different types of users (e.g. Medical Doctors, Osteopathic Doctors, Advance Practice Registered Nurses, Licensed Delegate, Unlicensed Delegates, Administrators, etc.)
- lll. "RPO" means Recovery Point Objective which is the age of files that must be recovered from backup storage for normal operations to resume if a computer, system, or network goes down as a result of a hardware, program, or communications failure.
- mmm. "RTO" means Recovery Time Objective which is the duration of time and a service level within which a business process must be restored after a disaster in order to avoid unacceptable consequences associated with a break in continuity.
- nnn. "RxNorm" means a normalized naming system for generic and branded drugs; and a tool for supporting semantic interoperation between drug terminologies and pharmacy knowledge base systems.
- ooo. "SFTP" means Secure File Transfer Protocol
- ppp. Shell account - "Shell account" in the context of this contract means an account that does not have its profile information filled out. It technically exists as an account with the bare minimum information (email and password), but is otherwise an empty account.

- qqq. "Specialty" means a specialty branch of the medical profession. After completing medical school, physicians or surgeons usually further their medical education in a specific specialty of medicine by completing a multiple year residency to become a medical specialist (e.g. Family Medicine, Anesthesiology, Nursing, Orthopedic Surgeon).
- rrr. "SSDI" means Social Security Death Index
- sss. "State Administrators" means individuals who are designated by the CSMD Director and work in operations for the CSMD and have been given access and an administration role in the CSMD web application(s) provided by the Contractor.
- ttt. "State PMP Data Collection Application" is the application hosted by the Contractor used by the State to collect controlled substance prescription data from dispensers in the state for controlled substances in Schedules II, III, and IV dispensed in this state, and Schedule V controlled substances identified by the controlled substance database committee that will be collected in this application and then processed into the State PMP User Application. This application in Tennessee is known by the dispensers as Tennessee Data Collection
- uuu. "State PMP User" means a person officially registered in the CSMD, by role.
- vvv. "State PMP User Application" is the application that is hosted by the Contractor and used to increase the quality of patient care by equipping health care practitioners and others as allowed by law to view prescription data collected on patients acquiring controlled substances in Schedules II, III, and IV dispensed in this state, and Schedule V controlled substances identified by the controlled substance database committee. This application in Tennessee is known by the registered Users as the Controlled Substance Monitoring Database (CSMD)
- www. "State PMP User Application Administrator and State PMP Data Collection Application Administration (also known as State Administrators in this BRD and Contract)" are employees of the State that have necessary privileges to provide customer support, operational support, and ability to generate reports as needed or requested
- xxx. "State Release Management Service (RMS) Team" employees of the State who conduct tests, analyze results and reports to the business unit to ensure that the functionality meets business requirements
- yyy. "STS" means Strategic Technology Solutions, which is the State of Tennessee's central Information Technology Services Department.
- zzz. "Sub-Specialty" as it related to the State PMP User Application this category provides the area of expertise that a person has within a specialty area for example: Profession of Medical Doctor, Specialty of Anesthesiology and Sub-Specialty of Pain Management
- aaaa. "Supervisors" are given their authority in the Prescription Safety Act of 2016 to approve individuals to register and/or perform CSMD requests.
- bbbb. "TBI" means Tennessee Bureau of Investigation
- cccc. "TBI Director" is a person appointed by the governor and manages the TBI
- dddd. "TennCare" means the Medicaid program for the State of Tennessee.
- eeee. "Test Environment" is a validated, stable and usable test environment where State team will execute test scenarios to validate that functionality meets business requirements

- ffff. "TN CSMD Committee" means the committee established by TCA §53-10-303 to create the CSMD.
- gggg. "TN Dispensers" means dispensers licensed by the Tennessee Board of Pharmacy
- hhhh. "Training Environment" an environment that mimics production that can be used to allow hands on experience in an environment with fake data and can also be used in educational outreach
- iiii. "UAT" means User Acceptance Testing
- jjjj. "Unlicensed Delegate (also known as Health Care Extender Unlicensed)" is any person who does not hold a professional license or registration that is designated by the healthcare practitioner to act as an agent of the healthcare practitioner
- kkkk. "Users" can be any individual, individual for a corporate entity, individual for a software company who by law can register to submit data to the State PMP Data Collection Application or it can be any individual by law who can register to view the collected prescription data in the State PMP User Application
- IIII. "XDEA" means the waiver (DWP) and any related endorsement authorizing qualified physicians to conduct maintenance and detoxification treatment using specifically approved schedule III, IV, or V narcotic medications associated with a DEA registration pursuant to the Drug Addiction Treatment Act (DATA) which waives the requirement for obtaining a separate Drug Enforcement Administration (DEA) registration as a Narcotic Treatment Program (NTP) for qualified physicians administering, dispensing, and prescribing these specific FDA approved controlled substances.

A.3. Current Functionality, Migration and Data Transmission

- a. The Contractor shall, at no additional cost to the State beyond those contained in this Contract, maintain the current State PMP Data Collection and State PMP User Application in the form in which both exist as of the effective date of this Contract, with the exception of changes to current functionality requested or agreed to by the State. Attachment 4 contains a spreadsheet with multiple tabs that identify the functions that constitute the current form of the State PMP User Application and the language contained in all lines in BRD that have Data Collection in the Applications/Group column and the Type Column contains Existing Functionality or Gap indicates this functionality exists in the current State Data Collection application and all functionality and processes and must be maintained until such time that State agrees to migrate to new applications. For the purposes of this Contract "in the form in which both exist" means that all open issues of record that have been communicated in writing by the State to the Contractor shall have been addressed to the satisfaction of the State or that the Contractor is in the process of addressing these issues to the satisfaction of the State. The Contractor shall, additionally, develop and provide the enhancements to the State Data Collection or State PMP User Applications if state laws, rules, and regulations demand additional functionality to be developed in current applications. The Contractor shall also develop, install, and configure enhancements to the State Data Collection or State PMP User Applications as listed in this Contract and Attachment 3. The Contractor shall not begin work on any enhancement listed in this Contract, including all attachments, without prior written consent from the State. The following enhancements listed in Attachment 3 shall be developed, installed, and configured by the Contractor to the State's approval and acceptance within two (2) months of the Contract start date, if these items were not completed in the previous contract,
 - i. BR2.1.6
 - ii. BR3.0.6
 - iii. BR4.1.2

iv. BR4.1.3

All remaining enhancements listed in Attachment 3 shall be developed, installed, and configured by the Contractor to the State's written approval and acceptance within eighteen (18) months of the Contract Effective Date.

- b. The Contractor shall not migrate the State Data Collection or State PMP User Application until the State provides written documentation agreeing that the Contractor has functionality in production to meet the State's needs currently being met by the two applications and services the Contractor acquired from Optimum Technology and subsequently enhanced to deliver the current level of service provided to the State as of the Contract Effective Date. State reserves the right to migrate without all gaps in functionality being available at time of migration if development is underway by Contractor with agreed upon delivery dates.
- c. Migration by the State to any other application/platform shall be contingent upon the Contractor providing access to the State's production data or providing a near real time replica of State data collected or created by transactions occurring in the databases to the State in a method agreed upon by the State and the Contractor. Data migration will be handled via a Memorandum Of Understanding (MOU) as described in Contract Section E.3.

A.4. Licenses

The Contractor shall provide the appropriate license(s) allowing the State and all authorized individuals to use the proposed solution in all environments provided to the State. Payment for licenses shall be made as described in Contract Section C.3.b.

A.5. Project Kickoff Meeting and Master Project Management Plan.

- a. Project Kickoff Meeting. The Contractor shall prepare for and schedule with the State a one-day project kickoff meeting to be held at a State site in Nashville, Tennessee no later than thirty (30) calendar days after this Contract Effective Date. The project kickoff meeting shall be led by the Contractor project manager and attended by other Contractor team with key project roles and State team. The project kickoff meeting agenda shall include but not be limited to the following topics and tasks, to be completed:

- (1) Project organization: Outline the roles and responsibilities of key project personnel along with the project sponsors.
- (2) Solution vision: Discuss the objectives and benefits of the project.
- (3) Project overview: Outline the scope and timeline of the project and present detailed information (deliverables and responsibilities) on each project task:
- (4) Project management
 - a. project charter
 - b. requirements confirmation and configuration
 - c. communication plan shall include but not limited to how the State project management team and Contractor project management team will communicate with a clear delineation of roles and responsibilities.
 - d. release management plan
 - e. security management plan
 - f. data conversion and migration (if applicable)
 - g. escalation plan
 - h. issue management
 - i. change management
 - j. technical management
 - k. data dictionary
 - l. disaster recovery plan
 - m. software modifications and related interfaces development
 - n. system documentation
 - o. software installation

- p. production deployment and go-live support
- q. training
- r. transition to help desk
- s. user acceptance testing

(5) Review key success factors: Outline key factors to ensure project success.

(6) Demo: Demonstrate the key features of the procured solution.

(7) Question and answer period: Answers to questions pertaining to the project.

The Contractor shall complete these activities (and any additional project kickoff meeting activities to which the State and the Contractor mutually agree) and obtain approval and acceptance from the State prior to distribution of payment as scheduled in Section C.3.b.

b. Master Project Management Plan.

The Contractor shall prepare a master project management plan and deliver this plan to the State no later than thirty (30) calendar days after this Contract Effective Date. This plan, which should follow the Tennessee Business Solutions Methodology (TBSM) located at <https://www.tn.gov/finance/strategic-technology-solutions/strategic-technology-solutions/tbsm.html>, must describe in detail the approach, activities, stages, duration, risks, and implementation for all work to be performed by the Contractor under the project. It must also detail, by name and position, the responsibilities of Contractor staff with respect to the work to be completed under the contract. As a minimum, this plan shall include the following deliverables:

- (1) A detailed project schedule describing all project deliverables and their completion dates.
- (2) The Contractor's change management plan, including a detailed description of the Contractor's proposed process for initiating Change Orders and the Contractor's proposed Change Order form.
- (3) A detailed description of the Contractor's proposed method of weekly reporting on the status of specific project deliverables. This description must include sample reporting documents.
- (4) A detailed description of the Contractor's proposed method of weekly reporting on the overall progress toward project goals and objectives. This description must include sample reporting documents and an agenda for and schedule of Contract reviews held between the Contractor's project manager and the State's project manager at a Nashville State site at least as often as every forty-five (45) calendar days after the project kickoff meeting.
- (5) A detailed description of the Contractor's proposed issue management plan for recording, monitoring, resolving, and reporting on resolution of issues that arise during the project. This description must include issues resolution timetables and escalation procedures.
- (6) A detailed risk management plan and register.
- (7) A communication plan that includes a detailed description of the processes and tools the Contractor will use to manage communication with State team and the timetables on which these communications will occur.

- (8) A detailed release management plan.
- (9) A detailed security management plan that adheres to the requirements as set forth in this contract.
- (10) A detailed description of the system documentation to be provided to State by the Contractor and the schedule on which this documentation will be provided.
- (11) A detailed description of the hardware/software and communication requirements for the proposed solution (e.g., browser compatibility, minimum system requirements, preferred operating system, any application specific add-ons or middleware, etc.).

A.6. Project Management.

The Contractor shall designate a single project manager to serve as the Contractor's primary point of contact for all activities and issues. The Contractor shall ensure that its project manager provides sufficient management of the project to ensure that all project activities are performed efficiently, accurately, and on schedule. Project management continues for the entire duration of the project.

The Contractor project manager shall coordinate as necessary with the State project manager through the executive sponsor to ensure that Contractor activities are managed consistently within overall Contract requirements as they are described in this Contract.

- a. Project Management. The workflow and minimum acceptable activities the Contractor shall perform for project management are as follows:
 - (1) Prepare and maintain a detailed project plan. This plan shall include project objectives and milestones; a critical path for all major project activities; schedules for completion of project deliverables; designations of the Contractor staff responsible for these deliverables and the reporting relationship among these staff; Contractor response and reporting protocols and timeframes; and documents relating to these responsibilities.
 - (2) Secure, schedule, and manage the resources necessary to assure that all project deliverables are completed to the satisfaction of the State on schedule and at the costs contained in the Contract.
 - (3) Communicate with the State's project manager, other State team, and relevant third parties using the methods, on the schedule(s), and within the timeframes contained in this Contract.
 - (4) Measure, track, and evaluate progress toward project objectives; report on progress at each contract review described in the Contract and, at other times, within five (5) business days of request by the State. Initiate corrective action, as necessary, to correct deficiencies in Contractor performance and to resolve other issues that arise during the Contract.
 - (5) Schedule, conduct, and report on the reviews required under the Contract. Respond within three (3) business days to requests from the State to schedule additional project progress reviews and discussions of other project-related matters, including Contractor staff performance.
 - (6) Track and report within ten (10) business days on all items identified for follow-up in Contract status reviews.
 - (7) Administer the change management plan, review and analyze change requests, and maintain the change request log as required.

- (8) Administer the project security management plan and review, analyze, resolve, and report security issues that arise during the Contract in a manner and on a schedule consistent with the State of Tennessee's STS Enterprise Information Security Policies; <https://www.tn.gov/content/dam/tn/finance/documents/Enterprise-Information-Security-Policies-ISO-27002-Public.pdf>.
- (9) Prepare and provide the State, on the schedule contained in the Contract, the system documentation required by the Contract.

The Contractor shall complete project management activities (and any additional project management activities to which the State and the Contractor mutually agree) to the approval and acceptance of the State prior to distribution of payments as scheduled in Section C.3.b.

A.7. Data Ownership.

- a. The State will own all rights, title and interest in its data that is related to the services provided by this Contract. The Contractor shall not access State user accounts or State data except to the extent:
 - (1) In the course of data center operations,
 - (2) In response to service or technical issues,
 - (3) As required by the express terms of this contract, or
 - (4) At the State's written request.
- b. All data collected for the State by the Contractor, subcontractor(s), or agents in the performance of this Contract shall become and remain the property of the State and such data may not be used by Contractor except by express written permission of the State.

A.8. Compliance with Data Security and Privacy Controls.

The Contractor warrants that security and privacy for all applicable data the Contractor, subcontractors, or agents create, receive, process, maintain, or store during the course of this Contract shall be handled in accordance with the terms outlined in this Contract.

A.9. Amazon Web Services Hosting Environment.

The Contractor shall host and maintain the CSMD in an Amazon Web Services (AWS) environment. Within thirty (30) days of request by the State, the Contractor shall provide their AWS hosting environment technical specifications and descriptions.

The Contractor shall provide advance written notice of at least ten (10) business days to the State's technical contact of any changes to the AWS hosting environment that may impact service availability or performance.

A.10. Change Order.

The State may, at its sole discretion and with written notice to the Contractor, request changes in the Scope that are necessary but were inadvertently unspecified in this Contract.

- a. Change Order Creation— After receipt of a written request for additional services from the State, the Contractor shall respond to the State, within a maximum of ten (10) business days, with a written proposal for completing the service. Contractor's proposal must specify:
 - (1) the effect, if any, of implementing the requested change(s) on all other services required under this Contract;
 - (2) the specific effort involved in completing the change(s);
 - (3) the expected schedule for completing the change(s);
 - (4) the maximum number of person hours required for the change(s); and

- (5) the maximum cost for the change(s)— this maximum cost shall in no instance exceed the product of the person hours required multiplied by the appropriate payment rate proposed for such work.

The Contractor shall not perform any additional service until the State has approved the proposal. If approved, the State will sign the proposal, and it shall constitute a Change Order between the Contract Parties pertaining to the specified change(s) and shall be incorporated, hereby, as a part of this Contract.

- b. Change Order Performance— Subsequent to creation of a Change Order, the Contractor shall complete the required services. The State will be the sole judge of the acceptable completion of work and, upon such determination, shall provide the Contractor written approval.
- c. Change Order Remuneration— The State will remunerate the Contractor only for acceptable work. All acceptable work performed pursuant to an approved Change Order, without a formal amendment of this Contract, shall be remunerated in accordance with and further limited by Contract Section C.3.c., PROVIDED THAT, the State shall be liable to the Contractor only for the cost of the actual goods or services provided to complete the necessary work, not to exceed the maximum cost for the change detailed in the Change Order. In no instance shall the State be liable to the Contractor for any amount exceeding the maximum cost specified by the Change Order authorizing the goods or services. Upon State approval of the work, the Contractor shall invoice the State in accordance with the relevant provisions of this Contract.

- A.11. Warranty. Contractor represents and warrants that the term of the warranty ("Warranty Period") shall be the greater of the Term of this Contract or any other warranty generally offered by Contractor, its suppliers, or manufacturers to customers of its goods or services. The goods or services provided under this Contract shall conform to the terms and conditions of this Contract throughout the Warranty Period. Any nonconformance of the goods or services to the terms and conditions of this Contract shall constitute a "Defect" and shall be considered "Defective." If Contractor receives notice of a Defect during the Warranty Period, then Contractor shall correct the Defect, at no additional charge.

Contractor represents and warrants that the State is authorized to possess and use all equipment, materials, software, and deliverables provided under this Contract.

Contractor represents and warrants that all goods or services provided under this Contract shall be provided in a timely and professional manner, by qualified and skilled individuals, and in conformity with standards generally accepted in Contractor's industry.

If Contractor fails to provide the goods or services as warranted, then Contractor will re-provide the goods or services at no additional charge. If Contractor is unable or unwilling to re-provide the goods or services as warranted, then the State shall be entitled to recover the fees paid to Contractor for the Defective goods or services. Any exercise of the State's rights under this Section shall not prejudice the State's rights to seek any other remedies available under this Contract or applicable law.

- A.12. Inspection and Acceptance. The State shall have the right to inspect all goods or services provided by Contractor under this Contract. If, upon inspection, the State determines that the goods or services are Defective, the State shall notify Contractor, and Contractor shall re-deliver the goods or provide the services at no additional cost to the State. If after a period of thirty (30) days following delivery of goods or performance of services the State does not provide a notice of any Defects, the goods or services shall be deemed to have been accepted by the State.

B. TERM OF CONTRACT:

- B.1. This Contract shall be effective on January 1, 2019 ("Effective Date") and extend for a period of thirty six (36) months after the Effective Date ("Term"). The State shall have no obligation for goods or services provided by the Contractor prior to the Effective Date.
- B.2. Renewal Options. This Contract may be renewed upon satisfactory completion of the Term. The State reserves the right to execute up to two (2) renewal options under the same terms and conditions for a period not to exceed twelve (12) months each by the State, at the State's sole option. In no event, however, shall the maximum Term, including all renewals or extensions, exceed a total of sixty (60) months.

C. PAYMENT TERMS AND CONDITIONS:

- C.1. Maximum Liability. In no event shall the maximum liability of the State under this Contract exceed **Two Million Five Hundred Twenty-Four Thousand Nine Hundred Twenty-Nine Dollars and Twenty-One Cents (\$2,524,929.21)** ("Maximum Liability"). This Contract does not grant the Contractor any exclusive rights. The State does not guarantee that it will buy any minimum quantity of goods or services under this Contract. Subject to the terms and conditions of this Contract, the Contractor will only be paid for goods or services provided under this Contract after a purchase order is issued to Contractor by the State or as otherwise specified by this Contract.
- C.2. Compensation Firm. The payment methodology in Section C.3. of this Contract shall constitute the entire compensation due the Contractor for all goods or services provided under this Contract regardless of the difficulty, materials or equipment required. The payment methodology includes all applicable taxes, fees, overhead, and all other direct and indirect costs incurred or to be incurred by the Contractor.
- C.3. Payment Methodology. The Contractor shall be compensated based on the payment methodology for goods or services authorized by the State in a total amount as set forth in Section C.1.
- a. The Contractor's compensation shall be contingent upon the satisfactory provision of goods or services as set forth in Section A.
 - b. The Contractor shall be compensated based upon the following payment methodology:

Goods or Services Description	Amount (per compensable increment)
ENHANCEMENTS	
State PMP Data Collection Application Validations – Attachment 3; Section BR4.1.4. A single, one-time fixed payment shall be made upon completion and the State's written approval and acceptance of installation and configuration of this enhancement. Documentation on functionality will be provided and training will be provided when necessary.	\$24,000 / (one-time charge upon written approval of State)
State PMP Data Collection and State PMP User Application Data Sources - RxNorm Validation– Attachment 3; Section BR4.2.0.1.a. A single, one-time fixed payment shall be made upon completion and the State's written approval and acceptance of installation and configuration of this enhancement. Documentation on functionality will be provided and training will be provided when necessary.	\$43,200 / (one-time charge upon written approval of State)
State PMP Data Collection and State PMP User Application Data Sources - ICD-10 – Attachment 3; Section BR4.2.0.1.b..	\$24,000 / (one-time charge upon

<p>A single, one-time fixed payment shall be made upon completion and the State's written approval and acceptance of installation and configuration of this enhancement.</p> <p>Documentation on functionality will be provided and training will be provided when necessary.</p>	<p>written approval of State)</p>
<p>State PMP User and Data Collection Applications Registration – Attachment 3; Section BR5.0.1.</p> <p>A single, one-time fixed payment shall be made upon completion and the State's written approval and acceptance of installation and configuration of this enhancement.</p> <p>Documentation on functionality will be provided and training will be provided when necessary.</p>	<p>\$12,000 / (one-time charge upon written approval of State)</p>
<p>State PMP User Application Registration: CMS Taxonomy Customization – Attachment 3; Section BR5.0.11.1 and CMS Taxonomy Specialties – Attachment 3; Section BR5.0.11.2</p> <p>A single, one-time fixed payment shall be made upon completion and the State's written approval and acceptance of installation and configuration of both of these enhancements.</p> <p>Documentation on functionality will be provided and training will be provided when necessary.</p>	<p>\$15,000 / (one-time charge upon written approval of State)</p>
<p>State PMP User Application PMPi Data Sharing –Attachment 3; Section BR8.0.1.</p> <p>A single, one-time fixed payment shall be made upon completion and the State's written approval and acceptance of installation and configuration of this enhancement.</p> <p>Documentation on functionality will be provided and training will be provided when necessary.</p>	<p>\$7,200 / (one-time charge upon written approval of State)</p>
<p>State PMP User Application Prescriber Records – Attachment 3; Section BR9.0.0.</p> <p>A single, one-time fixed payment shall be made upon completion and the State's written approval and acceptance of installation and configuration of this enhancement.</p> <p>Documentation on functionality will be provided and training will be provided when necessary.</p>	<p>\$36,000 / (one-time charge upon written approval of State)</p>
<p>State PMP User Application MME Conversions – Attachment 3; Section BR10.0.1.</p> <p>A single, one-time fixed payment shall be made upon completion and the State's written approval and acceptance of installation and configuration of this enhancement.</p> <p>Documentation on functionality will be provided and training will be provided when necessary.</p>	<p>\$24,000 / (one-time charge upon written approval of State)</p>
<p>State PMP User Application Clinical Risk Indicators: Combo Benzodiazepine/Opioid – Attachment 3; Section BR17.5 and State PMP User Application Clinical Risk Indicators: Combo Benzodiazepine/Opioid/Carisoprodol – Attachment 3; Section BR17.6</p> <p>A single, one-time fixed payment shall be made upon completion</p>	<p>\$36,000 / (one-time charge upon written approval of State)</p>

<p>and the State's written approval and acceptance of installation and configuration of both of these enhancements.</p> <p>Documentation on functionality will be provided and training will be provided when necessary.</p>	
<p>State PMP User Application Reporting: State Administrator(s) User Reports – Attachment 3; Section BR20.3.0</p> <p>A single, one-time fixed payment shall be made upon completion and the State's written approval and acceptance of installation and configuration of this enhancement.</p> <p>Documentation on functionality will be provided and training will be provided when necessary</p>	<p>\$14,400 / (one-time charge upon written approval of State)</p>
<p>State PMP Data Collection Application Reporting: Admin User Reports – Attachment 3; Section BR20.3.2.</p> <p>A single, one-time fixed payment shall be made upon completion and the State's written approval and acceptance of installation and configuration of this enhancement.</p> <p>Documentation on functionality will be provided and training will be provided when necessary.</p>	<p>\$24,000 / (one-time charge upon written approval of State)</p>
<p>State Reporting Tool (with access to State PMP Data Collection Application data) Reporting: Zero Reports - Attachment 3; Section BR20.12.0.</p> <p>A single, one-time fixed payment shall be made upon completion and the State's written approval and acceptance of installation and configuration of this enhancement.</p> <p>Documentation on functionality will be provided and training will be provided when necessary.</p>	<p>\$6,000 / (one-time charge upon written approval of State)</p>
<p>State Reporting Tool (with access to State PMP User Application data) Reporting: User Compliance - Attachment 3; Section BR20.25.1.</p> <p>A single, one-time fixed payment shall be made upon completion and the State's written approval and acceptance of installation and configuration of this enhancement.</p> <p>Documentation on functionality will be provided and training will be provided when necessary.</p>	<p>\$30,000 / (one-time charge upon written approval of State)</p>
<p>A single, one-time fixed payment shall be made upon completion and the State's written approval and acceptance of installation and configuration of each enhancement from Attachment 3 – BRD as listed below. The total cost for these enhancements combined, shall not exceed \$76,750</p> <ul style="list-style-type: none"> • BR3.0.3 State PMP Data Collection Application General Operations: Daily DEA File • BR3.0.4 State PMP Data Collection Application General Operations: Prescriber Consolidation ID • BR5.0.0.1.1 State PMP Data Collection Application Validation Requirements • BR5.0.10 State PMP User Application Registration • BR20.32.0 State Reporting Tool (with access to State PMP Data Collection Application data) Reporting: Prescription Processing Report <p>Documentation on functionality will be provided and training will be provided when necessary.</p>	<p>\$76,750 / (maximum amount for all enhancements combined, upon written approval of State)</p>

<p>Drug Court/Law Enforcement Enhancements</p> <p>A single, one-time fixed payment shall be made upon completion and the State's written approval and acceptance of installation and configuration of each enhancement from Attachment 3 – BRD as listed below. The total cost for these enhancements combined, shall not exceed \$75,000</p> <ul style="list-style-type: none"> • BR5.0.18.1 State PMP User Application Registration: Drug Courts • BR5.0.18.2 State PMP User Application Registration: Law Enforcement • BR5.0.18.3 State PMP User Application Registration: District Attorney and TBI Director • BR5.0.18.4 State PMP User Application Support • BR5.3.0 State PMP User Application Registration: Law Enforcement and Drug Courts • BR5.3.0.1 State PMP User Application Registration: Law Enforcement and Drug Courts Supervisors • BR5.3.1.1 State PMP User Application Registration: Law Enforcement and Drug Courts • BR5.3.2 State PMP User Application Registration: Law Enforcement • BR5.3.3 State PMP User Application Registration: Law Enforcement • BR5.3.4 State PMP User Application Registration: Law Enforcement and Drug Courts • BR5.3.5 State PMP User Application Registration: Drug Courts • BR14.2.0 State PMP User Application Law Enforcement Requests • BR14.2.1 State PMP User Application Law Enforcement Patient Requests • BR14.2.2 State PMP User Application Law Enforcement Dispenser Requests • BR14.2.3 State PMP User Application Law Enforcement Prescriber Requests • BR14.3.0 State PMP User Application: Drug Court Patient Requests • BR14.3.1 State PMP User Application: Drug Court Patient Requests • BR20.1.1 State PMP User Application Reporting: Request History • BR20.33.0 State Reporting Tool (with access to State PMP User Application Data) Reporting: State Administrator(s) Ad-hoc Law Enforcement and Drug Courts • BR20.33.1 State Reporting Tool (with access to State PMP User Application Data) Reporting: State Administrator(s) Ad-hoc Law Enforcement and Drug Courts <p>Documentation on functionality will be provided and training will</p>	<p>\$75,000 / (maximum amount for all enhancements combined, upon written approval of State)</p>
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be provided when necessary.	
State Identified Issue Support – Attachment 3; Section 3.2.1.3.a. – Test environment for RMS	
A single, one-time fixed payment shall be made upon completion and the State's written approval and acceptance of installation and configuration of one additional testing environment. Documentation on functionality will be provided and training will be provided when necessary.	\$6,000 / (one-time charge upon written approval of State)
State Reporting Tool (with access to State PMP User Application data) Prescriber Report – Attachment 3; Section BR22.0.0.	
A single, one-time fixed payment to provide the Prescriber Report product (BR22.0.0) to the State shall be made upon completion and the State's written approval and acceptance of product development, installation and configuration. Documentation on functionality will be provided and training will be provided when necessary.	\$75,000 / (one-time charge upon written approval of State)
A single, one-time fixed payment shall be made upon completion and the State's written approval and acceptance of enhancements to the Prescriber Report product (BR22.0.0). The total cost for all enhancements to the Prescriber Report product during the term of this Contract shall not exceed \$7,500. Documentation on functionality will be provided and training will be provided when necessary.	\$7,500 / (maximum amount for all enhancements combined, upon written approval of State)
OTech Platform Annual Fees	
Payments for OTECH software, licenses, system maintenance, support, goods and services shall be made monthly as listed below during the period in which Appriss provides current functionality as described in Contract Section A.3. Payment may be prorated if the State migrates off the OTECH Platform.	
PMP software, licenses, goods and services, system maintenance and support of the Databases, collection of data from Dispensers, cleansing of data collected, data archiving, data reporting, loading of that data to the CSMD, system maintenance and support and PMPI interface support. Payments to begin thirty (30) days after Contract Effective Date.	\$42,696.25 / (monthly)
Payment shall be made for maintenance and support of the additional test environment as described in Attachment 3, Section 3.2.1.3.a., after the State's written approval and acceptance of the test environment's installation and configuration. This amount may be prorated to coincide with the ending term date of this Contract.	\$500 / (monthly)
Payment shall be made for maintenance and support of the Prescriber Report product as described in Attachment 3, Section BR22.0.0., after the State's written approval and acceptance of product installation and configuration. This amount may be prorated to coincide with the ending term date of this Contract.	\$4,166.66 / (monthly)

Penetration Test and HITRUST Certification	
A single, one-time fixed payment shall be made upon completion and the State's written approval and acceptance of third party vendor's penetration test of the Contractor's OTECH application.	\$41,000 / (one-time charge upon written approval of State)
A single, one-time fixed payment shall be made upon completion and the State's written approval and acceptance of the HITRUST certification of the Contractor's OTECH application in year 1 of this Contract.	\$96,000 / (one-time charge upon written approval of State)
A single, one-time fixed payment shall be made upon completion and the State's written approval and acceptance of the HITRUST certification of the Contractor's OTECH application in year 3 of this Contract.	\$96,000 / (one-time charge upon written approval of State)
A single, one-time fixed payment shall be made upon completion and the State's written approval and acceptance of the HITRUST certification of the Contractor's OTECH application in year 5 of this Contract.	\$96,000 / (one-time charge upon written approval of State)

- C.4. The Contractor shall be compensated for changes requested and performed pursuant to Contract Section A.10, without a formal amendment of this Contract based upon the payment rates detailed in the schedule below and as agreed pursuant to Section A.10, PROVIDED THAT compensation to the Contractor for such "change order" work shall not exceed SEVEN PERCENT (7%) of the sum of milestone payment rates detailed in Section C.3.b., above (which is the total cost for the milestones and associated deliverables set forth in Contract Sections A.3. through A.12.). If, at any point during the Term, the State determines that the cost of necessary "change order" work would exceed the maximum amount, the State may amend this Contract to address the need.

Service Description	Amount (per compensable increment)
Change Order	\$ 175 per hour
NOTE: The Contractor shall not be compensated for travel time to the primary location of service provision.	

- C.5. Travel Compensation. The Contractor shall not be compensated or reimbursed for travel time, travel expenses, meals, or lodging.
- C.6. Invoice Requirements. The Contractor shall invoice the State only for goods delivered and accepted by the State or services satisfactorily provided at the amounts stipulated in Section C.3., above. Contractor shall submit invoices and necessary supporting documentation, no more frequently than once a month, and no later than thirty (30) days after goods or services have been provided to the following address:

TN Department of Health
6th floor, Andrew Johnson Building
Carole Sumner
Information Technology Services Division
710 James Robertson Parkway, 6th floor
Nashville, TN 37243

- a. Each invoice, on Contractor's letterhead, shall clearly and accurately detail all of the following information (calculations must be extended and totaled correctly):

- (1) Invoice number (assigned by the Contractor);
- (2) Invoice date;
- (3) Contract number (assigned by the State);
- (4) Customer account name: State of TN Department of Health, ITSD
- (5) Customer account number (assigned by the Contractor to the above-referenced Customer);
- (6) Contractor name;
- (7) Contractor Tennessee Edison registration ID number;
- (8) Contractor contact for invoice questions (name, phone, or email);
- (9) Contractor remittance address;
- (10) Description of delivered goods or services provided and invoiced, including identifying information as applicable;
- (11) Number of delivered or completed units, increments, hours, or days as applicable, of each good or service invoiced;
- (12) Applicable payment methodology (as stipulated in Section C.3.) of each good or service invoiced;
- (13) Amount due for each compensable unit of good or service; and
- (14) Total amount due for the invoice period.

b. Contractor's invoices shall:

- (1) Only include charges for goods delivered or services provided as described in Section A and in accordance with payment terms and conditions set forth in Section C;
- (2) Only be submitted for goods delivered or services completed and shall not include any charge for future goods to be delivered or services to be performed;
- (3) Not include Contractor's taxes, which includes without limitation Contractor's sales and use tax, excise taxes, franchise taxes, real or personal property taxes, or income taxes; and
- (4) Include shipping or delivery charges only as authorized in this Contract.

c. The timeframe for payment (or any discounts) begins only when the State is in receipt of an invoice that meets the minimum requirements of this Section C.5.

C.7. Payment of Invoice. A payment by the State shall not prejudice the State's right to object to or question any payment, invoice, or other matter. A payment by the State shall not be construed as acceptance of goods delivered, any part of the services provided, or as approval of any amount invoiced.

C.8. Invoice Reductions. The Contractor's invoice shall be subject to reduction for amounts included in any invoice or payment that is determined by the State, on the basis of audits conducted in accordance with the terms of this Contract, to not constitute proper compensation for goods delivered or services provided. If a remediation plan is developed, implemented, and found to be acceptable by the State, invoice reductions shall not be invoked.

C.9. Deductions. The State reserves the right to deduct from amounts, which are or shall become due and payable to the Contractor under this or any contract between the Contractor and the State of Tennessee, any amounts that are or shall become due and payable to the State of Tennessee by the Contractor.

C.10. Prerequisite Documentation. The Contractor shall not invoice the State under this Contract until the State has received the following, properly completed documentation.

- a. The Contractor shall complete, sign, and present to the State the "Authorization Agreement for Automatic Deposit Form" provided by the State. By doing so, the Contractor acknowledges and agrees that, once this form is received by the State, payments to the Contractor, under this or any other contract the Contractor has with the State of Tennessee, may be made by ACH; and

- b. The Contractor shall complete, sign, and return to the State the State-provided W-9 form. The taxpayer identification number on the W-9 form must be the same as the Contractor's Federal Employer Identification Number or Social Security Number referenced in the Contractor's Edison registration information.

D. MANDATORY TERMS AND CONDITIONS:

- D.1. Required Approvals. The State is not bound by this Contract until it is duly approved by the Parties and all appropriate State officials in accordance with applicable Tennessee laws and regulations. Depending upon the specifics of this Contract, this may include approvals by the Commissioner of Finance and Administration, the Commissioner of Human Resources, the Comptroller of the Treasury, and the Chief Procurement Officer. Approvals shall be evidenced by a signature or electronic approval.
- D.2. Communications and Contacts. All instructions, notices, consents, demands, or other communications required or contemplated by this Contract shall be in writing and shall be made by certified, first class mail, return receipt requested and postage prepaid, by overnight courier service with an asset tracking system, or by email or facsimile transmission with recipient confirmation. All communications, regardless of method of transmission, shall be addressed to the respective Party at the appropriate mailing address, facsimile number, or email address as stated below or any other address provided in writing by a Party.

The State:

General

David Bess, Pharm D
Director Controlled Substance Monitoring Database
665 Mainstream Drive, 2nd Floor
Nashville, TN 37243
David.Bess@tn.gov
Telephone # (615) 253-1305

Mike Newman, CIO
Tennessee Department of Health
Andrew Johnson Tower – 6th Floor
710 James Robertson Parkway
Nashville, TN 37243
Mike.Newman@tn.gov
Telephone # (615) 253-5417

CSMD Administrator

665 Mainstream Drive, 2nd Floor
Nashville, TN 37243
CSMD.Admin@tn.gov
Telephone # (615) 253-1305

Technical Matters

Marsha Sumner, Deputy CIO
Tennessee Department of Health – Information Technology Services Division
Andrew Johnson Tower – 6th Floor
710 James Robertson Parkway
Nashville, TN 37243
Marsha.Sumner@tn.gov
Telephone # (615) 741-7176

Contract Administration

Carole Sumner, Director – Administrative Services

Tennessee Department of Health – Information Technology Services Division
Andrew Johnson Tower – 6th Floor
710 James Robertson Parkway
Nashville, TN 37243
Carole.Sumner@tn.gov
Telephone # (615) 532-0033

The Contractor:

Jacob Cooper, Client Relationship Manager
Appriss Inc.
10401 Linn Station Rd Ste 200, Louisville, KY 40223
jcooper@appriss.com
Telephone # (502) 815-5656
FAX # (502) 815-5696

All instructions, notices, consents, demands, or other communications shall be considered effective upon receipt or recipient confirmation as may be required.

- D.3. Modification and Amendment. This Contract may be modified only by a written amendment signed by all Parties and approved by all applicable State officials.
- D.4. Subject to Funds Availability. The Contract is subject to the appropriation and availability of State or federal funds. In the event that the funds are not appropriated or are otherwise unavailable, the State reserves the right to terminate this Contract upon written notice to the Contractor. The State's exercise of its right to terminate this Contract shall not constitute a breach of Contract by the State. Upon receipt of the written notice, the Contractor shall cease all work associated with the Contract. If the State terminates this Contract due to lack of funds availability, the Contractor shall be entitled to compensation for all conforming goods requested and accepted by the State and for all satisfactory and authorized services completed as of the termination date. Should the State exercise its right to terminate this Contract due to unavailability of funds, the Contractor shall have no right to recover from the State any actual, general, special, incidental, consequential, or any other damages of any description or amount.
- D.5. Termination for Convenience. The State may terminate this Contract for convenience without cause and for any reason. The State shall give the Contractor at least thirty (30) days written notice before the termination date. The Contractor shall be entitled to compensation for all conforming goods delivered and accepted by the State or for satisfactory, authorized services completed as of the termination date. In no event shall the State be liable to the Contractor for compensation for any goods neither requested nor accepted by the State or for any services neither requested by the State nor satisfactorily performed by the Contractor. In no event shall the State's exercise of its right to terminate this Contract for convenience relieve the Contractor of any liability to the State for any damages or claims arising under this Contract.
- D.6. Termination for Cause. If a Party ("Breaching Party") fails to properly perform its obligations under this Contract, or if a Party materially violates any terms of this Contract ("Breach Condition"), the other Party ("Non-breaching Party") may provide written notice to the Breaching Party specifying the Breach Condition. If within thirty (30) days of notice, the Breaching Party has not cured the Breach Condition, the Non-breaching Party may terminate the Contract. In the event the Non-breaching Party is the State, the State may withhold payments in excess of compensation for completed services or provided goods. The Breaching Party shall not be relieved of liability to the Non-breaching Party for damages sustained by virtue of any breach of this Contract, and the Non-breaching Party may seek other remedies allowed at law or in equity for breach of this Contract.
- D.7. Assignment and Subcontracting. The Contractor shall not assign this Contract or enter into a subcontract for any of the goods or services provided under this Contract without the prior written approval of the State. Notwithstanding any use of the approved subcontractors, the Contractor

shall be the prime contractor and responsible for compliance with all terms and conditions of this Contract. The State reserves the right to request additional information or impose additional terms and conditions before approving an assignment of this Contract in whole or in part or the use of subcontractors in fulfilling the Contractor's obligations under this Contract.

- D.8. Conflicts of Interest. The Contractor warrants that no part of the Contractor's compensation shall be paid directly or indirectly to an employee or official of the State of Tennessee as wages, compensation, or gifts in exchange for acting as an officer, agent, employee, subcontractor, or consultant to the Contractor in connection with any work contemplated or performed under this Contract.

The Contractor acknowledges, understands, and agrees that this Contract shall be null and void if the Contractor is, or within the past six (6) months has been, an employee of the State of Tennessee or if the Contractor is an entity in which a controlling interest is held by an individual who is, or within the past six (6) months has been, an employee of the State of Tennessee.

- D.9. Nondiscrimination. The Contractor hereby agrees, warrants, and assures that no person shall be excluded from participation in, be denied benefits of, or be otherwise subjected to discrimination in the performance of this Contract or in the employment practices of the Contractor on the grounds of handicap or disability, age, race, creed, color, religion, sex, national origin, or any other classification protected by federal or state law. The Contractor shall, upon request, show proof of nondiscrimination and shall post in conspicuous places, available to all employees and applicants, notices of nondiscrimination.

- D.10. Prohibition of Illegal Immigrants. The requirements of Tenn. Code Ann. § 12-3-309 addressing the use of illegal immigrants in the performance of any contract to supply goods or services to the state of Tennessee, shall be a material provision of this Contract, a breach of which shall be grounds for monetary and other penalties, up to and including termination of this Contract.

- a. The Contractor agrees that the Contractor shall not knowingly utilize the services of an illegal immigrant in the performance of this Contract and shall not knowingly utilize the services of any subcontractor who will utilize the services of an illegal immigrant in the performance of this Contract. The Contractor shall reaffirm this attestation, in writing, by submitting to the State a completed and signed copy of the document at Attachment 1, semi-annually during the Term. If the Contractor is a party to more than one contract with the State, the Contractor may submit one attestation that applies to all contracts with the State. All Contractor attestations shall be maintained by the Contractor and made available to State officials upon request.
- b. Prior to the use of any subcontractor in the performance of this Contract, and semi-annually thereafter, during the Term, the Contractor shall obtain and retain a current, written attestation that the subcontractor shall not knowingly utilize the services of an illegal immigrant to perform work under this Contract and shall not knowingly utilize the services of any subcontractor who will utilize the services of an illegal immigrant to perform work under this Contract. Attestations obtained from subcontractors shall be maintained by the Contractor and made available to State officials upon request.
- c. The Contractor shall maintain records for all personnel used in the performance of this Contract. Contractor's records shall be subject to review and random inspection at any reasonable time upon reasonable notice by the State.
- d. The Contractor understands and agrees that failure to comply with this section will be subject to the sanctions of Tenn. Code Ann. § 12-3-309 for acts or omissions occurring after its effective date.
- e. For purposes of this Contract, "illegal immigrant" shall be defined as any person who is not: (i) a United States citizen; (ii) a Lawful Permanent Resident; (iii) a person whose physical presence in the United States is authorized; (iv) allowed by the federal Department of Homeland Security and who, under federal immigration laws or

regulations, is authorized to be employed in the U.S.; or (v) is otherwise authorized to provide services under the Contract.

- D.11. Records. The Contractor shall maintain documentation for all charges under this Contract. The books, records, and documents of the Contractor, for work performed or money received under this Contract, shall be maintained for a period of five (5) full years from the date of the final payment and shall be subject to audit at any reasonable time and upon reasonable notice by the State, the Comptroller of the Treasury, or their duly appointed representatives. The financial statements shall be prepared in accordance with generally accepted accounting principles.
- D.12. Monitoring. The Contractor's activities conducted and records maintained pursuant to this Contract shall be subject to monitoring and evaluation by the State, the Comptroller of the Treasury, or their duly appointed representatives.
- D.13. Progress Reports. The Contractor shall submit brief, periodic, progress reports to the State as requested.
- D.14. Strict Performance. Failure by any Party to this Contract to require, in any one or more cases, the strict performance of any of the terms, covenants, conditions, or provisions of this Contract shall not be construed as a waiver or relinquishment of any term, covenant, condition, or provision. No term or condition of this Contract shall be held to be waived, modified, or deleted except by a written amendment signed by the Parties.
- D.15. Independent Contractor. The Parties shall not act as employees, partners, joint venturers, or associates of one another. The Parties are independent contracting entities. Nothing in this Contract shall be construed to create an employer/employee relationship or to allow either Party to exercise control or direction over the manner or method by which the other transacts its business affairs or provides its usual services. The employees or agents of one Party are not employees or agents of the other Party.
- D.16. Patient Protection and Affordable Care Act. The Contractor agrees that it will be responsible for compliance with the Patient Protection and Affordable Care Act ("PPACA") with respect to itself and its employees, including any obligation to report health insurance coverage, provide health insurance coverage, or pay any financial assessment, tax, or penalty for not providing health insurance. The Contractor shall indemnify the State and hold it harmless for any costs to the State arising from Contractor's failure to fulfill its PPACA responsibilities for itself or its employees.
- D.17. Limitation of State's Liability. The State shall have no liability except as specifically provided in this Contract. In no event will the State be liable to the Contractor or any other party for any lost revenues, lost profits, loss of business, decrease in the value of any securities or cash position, time, goodwill, or any indirect, special, incidental, punitive, exemplary or consequential damages of any nature, whether based on warranty, contract, statute, regulation, tort (including but not limited to negligence), or any other legal theory that may arise under this Contract or otherwise. The State's total liability under this Contract (including any exhibits, schedules, amendments or other attachments to the Contract) or otherwise shall under no circumstances exceed the Maximum Liability. This limitation of liability is cumulative and not per incident.
- D.18. Limitation of Contractor's Liability. In accordance with Tenn. Code Ann. § 12-3-701, the Contractor's liability for all claims arising under this Contract shall be limited to an amount equal to two (2) times the Maximum Liability amount detailed in Section C.1. and as may be amended, PROVIDED THAT in no event shall this Section limit the liability of the Contractor for: (i) intellectual property or any Contractor indemnity obligations for infringement for third-party intellectual property rights; (ii) any claims covered by any specific provision in the Contract providing for liquidated damages; or (iii) any claims for intentional torts, criminal acts, fraudulent conduct, or acts or omissions that result in personal injuries or death.
- D.19. Hold Harmless. The Contractor agrees to indemnify and hold harmless the State of Tennessee as well as its officers, agents, and employees from and against any and all claims, liabilities,

losses, and causes of action which may arise, accrue, or result to any person, firm, corporation, or other entity which may be injured or damaged as a result of acts, omissions, or negligence on the part of the Contractor, its employees, or any person acting for or on its or their behalf relating to this Contract. The Contractor further agrees it shall be liable for the reasonable cost of attorneys for the State to enforce the terms of this Contract.

In the event of any suit or claim, the Parties shall give each other immediate notice and provide all necessary assistance to respond. The failure of the State to give notice shall only relieve the Contractor of its obligations under this Section to the extent that the Contractor can demonstrate actual prejudice arising from the failure to give notice. This Section shall not grant the Contractor, through its attorneys, the right to represent the State in any legal matter, as the right to represent the State is governed by Tenn. Code Ann. § 8-6-106.

D.20. HIPAA Compliance. The State and Contractor shall comply with obligations under the Health Insurance Portability and Accountability Act of 1996 ("HIPAA"), Health Information Technology for Economic and Clinical Health ("HITECH") Act and any other relevant laws and regulations regarding privacy (collectively the "Privacy Rules"). The obligations set forth in this Section shall survive the termination of this Contract.

- a. Contractor warrants to the State that it is familiar with the requirements of the Privacy Rules, and will comply with all applicable requirements in the course of this Contract.
- b. Contractor warrants that it will cooperate with the State, including cooperation and coordination with State privacy officials and other compliance officers required by the Privacy Rules, in the course of performance of the Contract so that both parties will be in compliance with the Privacy Rules.
- c. The State and the Contractor will sign documents, including but not limited to business associate agreements, as required by the Privacy Rules and that are reasonably necessary to keep the State and Contractor in compliance with the Privacy Rules. This provision shall not apply if information received or delivered by the parties under this Contract is NOT "protected health information" as defined by the Privacy Rules, or if the Privacy Rules permit the parties to receive or deliver the information without entering into a business associate agreement or signing another document.
- d. The Contractor will indemnify the State and hold it harmless for any violation by the Contractor or its subcontractors of the Privacy Rules. This includes the costs of responding to a breach of protected health information, the costs of responding to a government enforcement action related to the breach, and any fines, penalties, or damages paid by the State because of the violation.

D.21. Tennessee Consolidated Retirement System. Subject to statutory exceptions contained in Tenn. Code Ann. §§ 8-36-801, *et seq.*, the law governing the Tennessee Consolidated Retirement System ("TCRS"), provides that if a retired member of TCRS, or of any superseded system administered by TCRS, or of any local retirement fund established under Tenn. Code Ann. §§ 8-35-101, *et seq.*, accepts State employment, the member's retirement allowance is suspended during the period of the employment. Accordingly and notwithstanding any provision of this Contract to the contrary, the Contractor agrees that if it is later determined that the true nature of the working relationship between the Contractor and the State under this Contract is that of "employee/employer" and not that of an independent contractor, the Contractor, if a retired member of TCRS, may be required to repay to TCRS the amount of retirement benefits the Contractor received from TCRS during the Term.

D.22. Tennessee Department of Revenue Registration. The Contractor shall comply with all applicable registration requirements contained in Tenn. Code Ann. §§ 67-6-601 – 608. Compliance with applicable registration requirements is a material requirement of this Contract.

D.23. Debarment and Suspension. The Contractor certifies, to the best of its knowledge and belief, that it, its current and future principals, its current and future subcontractors and their principals:

- a. are not presently debarred, suspended, proposed for debarment, declared ineligible, or voluntarily excluded from covered transactions by any federal or state department or agency;
- b. have not within a three (3) year period preceding this Contract been convicted of, or had a civil judgment rendered against them from commission of fraud, or a criminal offense in connection with obtaining, attempting to obtain, or performing a public (federal, state, or local) transaction or grant under a public transaction; violation of federal or state antitrust statutes or commission of embezzlement, theft, forgery, bribery, falsification, or destruction of records, making false statements, or receiving stolen property;
- c. are not presently indicted or otherwise criminally or civilly charged by a government entity (federal, state, or local) with commission of any of the offenses detailed in section b. of this certification; and
- d. have not within a three (3) year period preceding this Contract had one or more public transactions (federal, state, or local) terminated for cause or default.

The Contractor shall provide immediate written notice to the State if at any time it learns that there was an earlier failure to disclose information or that due to changed circumstances, its principals or the principals of its subcontractors are excluded, disqualified, or presently fall under any of the prohibitions of sections a-d.

- D.24. Force Majeure. "Force Majeure Event" means fire, flood, earthquake, elements of nature or acts of God, wars, riots, civil disorders, rebellions or revolutions, acts of terrorism or any other similar cause beyond the reasonable control of the Party except to the extent that the non-performing Party is at fault in failing to prevent or causing the default or delay, and provided that the default or delay cannot reasonably be circumvented by the non-performing Party through the use of alternate sources, workaround plans or other means. A strike, lockout or labor dispute shall not excuse either Party from its obligations under this Contract. Except as set forth in this Section, any failure or delay by a Party in the performance of its obligations under this Contract arising from a Force Majeure Event is not a default under this Contract or grounds for termination. The non-performing Party will be excused from performing those obligations directly affected by the Force Majeure Event, and only for as long as the Force Majeure Event continues, provided that the Party continues to use diligent, good faith efforts to resume performance without delay. The occurrence of a Force Majeure Event affecting Contractor's representatives, suppliers, subcontractors, customers or business apart from this Contract is not a Force Majeure Event under this Contract. Contractor will promptly notify the State of any delay caused by a Force Majeure Event (to be confirmed in a written notice to the State within one (1) day of the inception of the delay) that a Force Majeure Event has occurred, and will describe in reasonable detail the nature of the Force Majeure Event. If any Force Majeure Event results in a delay in Contractor's performance longer than forty-eight (48) hours, the State may, upon notice to Contractor: (a) cease payment of the fees until Contractor resumes performance of the affected obligations; or (b) immediately terminate this Contract or any purchase order, in whole or in part, without further payment except for fees then due and payable. Contractor will not increase its charges under this Contract or charge the State any fees other than those provided for in this Contract as the result of a Force Majeure Event.
- D.25. State and Federal Compliance. The Contractor shall comply with all applicable state and federal laws and regulations in the performance of this Contract.
- D.26. Governing Law. This Contract shall be governed by and construed in accordance with the laws of the State of Tennessee. The Tennessee Claims Commission or the state or federal courts in Tennessee shall be the venue for all claims, disputes, or disagreements arising under this Contract. The Contractor acknowledges and agrees that any rights, claims, or remedies against the State of Tennessee or its employees arising under this Contract shall be subject to and limited to those rights and remedies available under Tenn. Code Ann. §§ 9-8-101 - 407.

- D.27. Entire Agreement. This Contract is complete and contains the entire understanding between the Parties relating to its subject matter, including all the terms and conditions of the Parties' agreement. This Contract supersedes any and all prior understandings, representations, negotiations, and agreements between the Parties, whether written or oral.
- D.28. Severability. If any terms and conditions of this Contract are held to be invalid or unenforceable as a matter of law, the other terms and conditions of this Contract shall not be affected and shall remain in full force and effect. The terms and conditions of this Contract are severable.
- D.29. Headings. Section headings of this Contract are for reference purposes only and shall not be construed as part of this Contract.
- D.30. Incorporation of Additional Documents. Each of the following documents is included as a part of this Contract by reference. In the event of a discrepancy or ambiguity regarding the Contractor's duties, responsibilities, and performance under this Contract, these items shall govern in order of precedence below:
- a. any amendment to this Contract, with the latter in time controlling over any earlier amendments;
 - b. this Contract with any attachments or exhibits (excluding the items listed at subsections c. through f., below),;
 - (1) Attachment 1 – Attestation RE Personnel used in Contract Performance
 - (2) Attachment 2 – Business Associate Agreement (BAA)
 - (3) Attachment 3 – Business Requirements Document
 - (4) Attachment 4 – Current Functionality
 - c. any clarifications of or addenda to the Contractor's proposal seeking this Contract;
 - d. the State solicitation, as may be amended, requesting responses in competition for this Contract;
 - e. any technical specifications provided to proposers during the procurement process to award this Contract; and
 - f. the Contractor's response seeking this Contract.
- D.31. Iran Divestment Act. The requirements of Tenn. Code Ann. § 12-12-101 et.seq., addressing contracting with persons as defined at T.C.A. §12-12-103(5) that engage in investment activities in Iran, shall be a material provision of this Contract. The Contractor certifies, under penalty of perjury, that to the best of its knowledge and belief that it is not on the list created pursuant to Tenn. Code Ann. § 12-12-106.
- D.32. Insurance. Contractor shall maintain insurance coverage as specified in this Section. The State reserves the right to amend or require additional insurance coverage, coverage amounts, and endorsements required under this Contract. Contractor's failure to maintain or submit evidence of insurance coverage, as required, is a material breach of this Contract. If Contractor loses insurance coverage, fails to renew coverage, or for any reason becomes uninsured during the Term, Contractor shall immediately notify the State. All insurance companies providing coverage must be: (a) acceptable to the State; (b) authorized by the Tennessee Department of Commerce and Insurance ("TDCI"); and (c) rated A- / VII or better by A.M. Best. All coverage must be on a primary basis and noncontributory with any other insurance or self-insurance carried by the State. Contractor agrees to name the State as an additional insured on any insurance policy with the exception of workers' compensation (employer liability) and professional liability (errors and omissions) insurance. All policies must contain an endorsement for a waiver of subrogation in favor of the State. Any deductible over fifty thousand dollars (\$50,000) must be approved by the State. The deductible and any premiums are the Contractor's sole responsibility. The Contractor agrees that the insurance requirements specified in this Section do not reduce any liability the Contractor has assumed under this Contract including any indemnification or hold harmless requirements.

To achieve the required coverage amounts, a combination of an otherwise deficient specific policy and an umbrella policy with an aggregate meeting or exceeding the required coverage

amounts is acceptable. For example: If the required policy limit under this Contract is for two million dollars (\$2,000,000) in coverage, acceptable coverage would include a specific policy covering one million dollars (\$1,000,000) combined with an umbrella policy for an additional one million dollars (\$1,000,000). If the deficient underlying policy is for a coverage area without aggregate limits (generally Automobile Liability and Employers' Liability Accident), Contractor shall provide a copy of the umbrella insurance policy documents to ensure that no aggregate limit applies to the umbrella policy for that coverage area.

Contractor shall provide the State a certificate of insurance ("COI") evidencing the coverages and amounts specified in this Section. The COI must be on a form approved by the TDCI (standard ACORD form preferred). The COI must list each insurer's National Association of Insurance Commissioners (NAIC) number and be signed by an authorized representative of the insurer. The COI must list the State of Tennessee – CPO Risk Manager, 312 Rosa L. Parks Ave., 3rd floor Central Procurement Office, Nashville, TN 37243 as the certificate holder. Contractor shall provide the COI ten (10) business days prior to the Effective Date and again thirty (30) calendar days before renewal or replacement of coverage. Contractor shall provide the State evidence that all subcontractors maintain the required insurance or that subcontractors are included under the Contractor's policy. At any time, the State may require Contractor to provide a valid COI. The parties agree that failure to provide evidence of insurance coverage as required is a material breach of this Contract. If Contractor self-insures, then a COI will not be required to prove coverage. Instead Contractor shall provide a certificate of self-insurance or a letter, on Contractor's letterhead, detailing its coverage, policy amounts, and proof of funds to reasonably cover such expenses.

The State agrees that it shall give written notice to the Contractor as soon as practicable after the State becomes aware of any claim asserted or made against the State, but in no event later than thirty (30) calendar days after the State becomes aware of such claim. The failure of the State to give notice shall only relieve the Contractor of its obligations under this Section to the extent that the Contractor can demonstrate actual prejudice arising from the failure to give notice. This Section shall not grant the Contractor or its insurer, through its attorneys, the right to represent the State in any legal matter, as the right to represent the State is governed by Tenn. Code Ann. § 8-6-106.

The Contractor shall obtain and maintain, at a minimum, the following insurance coverages and policy limits.

a. Commercial General Liability Insurance

- 1) The Contractor shall maintain commercial general liability insurance, which shall be written on an Insurance Services Office, Inc. (also known as ISO) occurrence form (or a substitute form providing equivalent coverage) and shall cover liability arising from property damage, premises/operations, independent contractors, contractual liability, completed operations/products, personal and advertising injury, and liability assumed under an insured contract (including the tort liability of another assumed in a business contract).

The Contractor shall maintain bodily injury/property damage with a combined single limit not less than one million dollars (\$1,000,000) per occurrence and two million dollars (\$2,000,000) aggregate for bodily injury and property damage, including products and completed operations coverage with an aggregate limit of at least two million dollars (\$2,000,000).

b. Workers' Compensation and Employer Liability Insurance

- 1) For Contractors statutorily required to carry workers' compensation and employer liability insurance, the Contractor shall maintain:

- i. Workers' compensation in an amount not less than one million dollars (\$1,000,000) including employer liability of one million dollars (\$1,000,000) per accident for bodily injury by accident, one million dollars (\$1,000,000) policy limit by disease, and one million dollars (\$1,000,000) per employee for bodily injury by disease.
- 2) If the Contractor certifies that it is exempt from the requirements of Tenn. Code Ann. §§ 50-6-101 – 103, then the Contractor shall furnish written proof of such exemption for one or more of the following reasons:
 - i. The Contractor employs fewer than five (5) employees;
 - ii. The Contractor is a sole proprietor;
 - iii. The Contractor is in the construction business or trades with no employees;
 - iv. The Contractor is in the coal mining industry with no employees;
 - v. The Contractor is a state or local government; or
 - vi. The Contractor self-insures its workers' compensation and is in compliance with the TDCI rules and Tenn. Code Ann. § 50-6-405.

c. **Automobile Liability Insurance**

- 1) The Contractor shall maintain automobile liability insurance which shall cover liability arising out of any automobile (including owned, leased, hired, and non-owned automobiles).
- 2) The Contractor shall maintain bodily injury/property damage with a limit not less than one million dollars (\$1,000,000) per occurrence or combined single limit.

D.33. **Major Procurement Contract Sales and Use Tax.** Pursuant to Tenn. Code Ann. § 4-39-102 and to the extent applicable, the Contractor and the Contractor's subcontractors shall remit sales and use taxes on the sales of goods or services that are made by the Contractor or the Contractor's subcontractors and that are subject to tax.

D.34. **Equal Opportunity.** The Contractor agrees as follows:

- a. The Contractor will not discriminate against any employee or applicant for employment because of race, color, religion, sex, sexual orientation, gender identity, or national origin. The Contractor will take affirmative action to ensure that applicants are employed, and that employees are treated during employment, without regard to their race, color, religion, sex, sexual orientation, gender identity, or national origin. Such action shall include, but not be limited to the following:
 - (1) Employment, upgrading, demotion, or transfer, recruitment or recruitment advertising;
 - (2) Layoff or termination;
 - (3) Rates of pay or other forms of compensation; and
 - (4) Selection for training, including apprenticeship.

The Contractor agrees to post in conspicuous places, available to employees and applicants for employment, notices to be provided by the contracting officer setting forth the provisions of this nondiscrimination clause.

- b. The Contractor will, in all solicitations or advertisements for employees placed by or on behalf of the Contractor, state that all qualified applicants will receive considerations for employment without regard to race, color, religion, sex, sexual orientation, gender identity, or national origin.
- c. If the State approves any subcontract, the subcontract shall include paragraphs (a) and (b) above.

In addition, to the extent applicable the Contractor agrees to comply with 41 C.F. R. § 60-1.4, as that section is amended from time to time during the term.

E. SPECIAL TERMS AND CONDITIONS:

- E.1. Conflicting Terms and Conditions. Should any of these special terms and conditions conflict with any other terms and conditions of this Contract, the special terms and conditions shall be subordinate to the Contract's other terms and conditions.
- E.2. Confidentiality of Records. Strict standards of confidentiality of records and information shall be maintained in accordance with applicable state and federal law. All material and information, regardless of form, medium or method of communication, provided to the Contractor by the State or acquired by the Contractor on behalf of the State that is regarded as confidential under state or federal law shall be regarded as "Confidential Information." Nothing in this Section shall permit Contractor to disclose any Confidential Information, regardless of whether it has been disclosed or made available to the Contractor due to intentional or negligent actions or inactions of agents of the State or third parties. Confidential Information shall not be disclosed except as required or permitted under state or federal law. Contractor shall take all necessary steps to safeguard the confidentiality of such material or information in conformance with applicable state and federal law.

The obligations set forth in this Section shall survive the termination of this Contract.

- E.3. Additional lines, items, or options. At its sole discretion, the State may make written requests to the Contractor to add lines that are needed and within the Scope but were not included in the original Contract. Such lines will be added to the Contract through a Memorandum of Understanding ("MOU"), not an amendment.
 - a. After the Contractor receives a written request to add lines, the Contractor shall have ten (10) business days to respond with a written proposal. The Contractor's written proposal shall include:
 - (1) The effect, if any, of adding the lines on the other goods or services required under the Contract;
 - (2) Any pricing related to the new lines;
 - (3) The expected effective date for the availability of the new lines
 - b. The State may negotiate the terms of the Contractor's proposal by requesting revisions to the proposal.
 - c. To indicate acceptance of a proposal, the State will sign it. The signed proposal shall constitute a MOU between the Parties, and the lines shall be incorporated into the Contract as if set forth verbatim.
 - d. Only after a MOU has been executed shall the Contractor perform or deliver the new lines.
- E.4. Intellectual Property Indemnity. The Contractor agrees to indemnify and hold harmless the State of Tennessee as well as its officers, agents, and employees from and against any and all claims or suits which may be brought against the State concerning or arising out of any claim of an alleged patent, copyright, trade secret or other intellectual property infringement. In any such claim or action brought against the State, the Contractor shall satisfy and indemnify the State for the amount of any settlement or final judgment, and the Contractor shall be responsible for all

legal or other fees or expenses incurred by the State arising from any such claim. The State shall give the Contractor notice of any such claim or suit, however, the failure of the State to give such notice shall only relieve Contractor of its obligations under this Section to the extent Contractor can demonstrate actual prejudice arising from the State's failure to give notice. This Section shall not grant the Contractor, through its attorneys, the right to represent the State of Tennessee in any legal matter, as provided in Tenn. Code Ann. § 8-6-106.

- E.5. Software License Warranty. Contractor grants a license to the State to use all software provided under this Contract in the course of the State's business and purposes.
- E.6. Software Support and Maintenance Warranty. Contractor shall provide to the State all software upgrades, modifications, bug fixes, or other improvements in its software that it makes generally available to its customers.
- E.7. Contractor Hosted Services and Confidential Data.
- a. "Confidential State Data" is defined as data deemed confidential by State or Federal statute or regulation. The Contractor shall protect Confidential State Data as follows:
- (1) The Contractor shall ensure that all Confidential State Data is housed in the continental United States, inclusive of backup data.
 - (2) The Contractor shall encrypt Confidential State Data at rest and in transit using the current version of Federal Information Processing Standard ("FIPS") 140-2 validated encryption technologies.
 - (3) The Contractor's processing environment containing Confidential State Data shall be in accordance with at least one of the following security standards: (i) International Standards Organization ("ISO") 27001; (ii) Federal Risk and Authorization Management Program ("FedRAMP"); (iii) American Institute of Certified Public Accountants ("AICPA") Service Organization Controls ("SOC") 2 Type II; or (iv) Health Information Trust Alliance (HITRUST) certified. The Contractor shall provide proof of current certification annually and upon State request.
 - (4) The Contractor must comply with the State's Enterprise Information Security Policies. This document is found at the following URL: <https://www.tn.gov/content/dam/tn/finance/documents/Enterprise-Information-Security-Policies-ISO-27002-Public.pdf>.
 - (5) In the event that the operating system is an integral part of the application, the Contractor agrees to maintain Operating Systems at current, manufacturer supported versions. "Operating System" shall mean the software that supports a computer's basic functions, such as scheduling tasks, executing applications, and controlling peripherals.
 - (6) The Contractor agrees to maintain the Application so that it will run on a current, manufacturer-supported Operating System. "Application" shall mean the computer code that supports and accomplishes the State's requirements as set forth in this Contract. The Contractor shall make sure that the Application is at all times fully compatible with a manufacturer-supported Operating System; the State shall not be required to run an Operating System that is no longer supported by the manufacturer.
 - (7) If the Application requires middleware or database software, Contractor shall maintain middleware and database software versions that are at all times fully compatible with current versions of the Operating System and Application, to ensure that security vulnerabilities are not introduced.

- (8) With advance notice from the State, and no more than one (1) time per year the Contractor agrees to allow the State to perform logical audits and/or receive reports from third party audits of the facility that is hosting Confidential State Data.
 - (9) The Contractor must annually perform Penetration Tests and Vulnerability Assessments against its Processing Environment. "Processing Environment" shall mean the combination of software and hardware on which the Application runs. "Penetration Tests" shall be in the form of software attacks on the Contractor's computer system, with the purpose of discovering security weaknesses, and potentially gaining access to the computer's features and data. The "Vulnerability Assessment" shall have the goal of defining, identifying, and classifying the security holes (vulnerabilities) in the Contractor's computer, network, or communications infrastructure. The Contractor shall allow the State, at its option, to perform Penetration Tests and Vulnerability Assessments on the Contractor's Processing Environment.
- b. Business Continuity Requirements. The Contractor shall maintain set(s) of documents, instructions, and procedures which enable the Contractor to respond to accidents, disasters, emergencies, or threats without any stoppage or hindrance in its key operations ("Business Continuity Requirements"). Business Continuity Requirements shall include:
 - (1) "Disaster Recovery Capabilities" refer to the actions the Contractor takes to meet the Recovery Point and Recovery Time Objectives defined below. Disaster Recovery Capabilities shall meet the following objectives:
 - i. Recovery Point Objective ("RPO"). The RPO is defined as the maximum targeted period in which data might be lost from an IT service due to a major incident: One (1) hour
 - ii. Recovery Time Objective ("RTO"). The RTO is defined as the targeted duration of time and a service level within which a business process must be restored after a disaster (or disruption) in order to avoid unacceptable consequences associated with a break in business continuity: twenty-four (24) hours
 - (2) The Contractor shall perform at least one Disaster Recovery Test every three hundred sixty-five (365) days. A "Disaster Recovery Test" shall mean the process of verifying the success of the restoration procedures that are executed after a critical IT failure or disruption occurs. The Disaster Recovery Test shall use actual State Data Sets that mirror production data, and success shall be defined as the Contractor verifying that the Contractor can meet the State's RPO and RTO requirements. A "Data Set" is defined as a collection of related sets of information that is composed of separate elements but can be manipulated as a unit by a computer. The Contractor shall provide written confirmation to the State after each Disaster Recover Test that its Disaster Recovery Capabilities meet the RPO and RTO requirements.
- c. Upon State request, the Contractor shall provide a copy of all Confidential State Data it holds. The Contractor shall provide such data on media and in a format determined by the State.
- d. Upon termination of this Contract and in consultation with the State, the Contractor shall destroy all Confidential State Data it holds (including any copies such as backups) in accordance with the current version of National Institute of Standards and Technology ("NIST") Special Publication 800-88. The Contractor shall provide a

written confirmation of destruction to the State within ten (10) business days after destruction.

- E.8. State Furnished Property. The Contractor shall be responsible for the correct use, maintenance, and protection of all articles of nonexpendable, tangible personal property furnished by the State for the Contractor's use under this Contract. Upon termination of this Contract, all property furnished by the State shall be returned to the State in the same condition as when received, less reasonable wear and tear. Should the property be destroyed, lost, or stolen, the Contractor shall be responsible to the State for the fair market value of the property at the time of loss.
- E.9. Lobbying. The Contractor certifies, to the best of its knowledge and belief, that:
- a. No federally appropriated funds have been paid or will be paid, by or on behalf of the Contractor, to any person for influencing or attempting to influence an officer or employee of an agency, a member of Congress, an officer or employee of Congress, or an employee of a member of Congress in connection with the awarding of any federal contract, the making of any federal grant, the making of any federal loan, the entering into of any cooperative agreement, and the extension, continuation, renewal, amendment, or modification of any federal contract, grant, loan, or cooperative agreement.
 - b. If any funds other than federally appropriated funds have been paid or will be paid to any person for influencing or attempting to influence an officer or employee of any agency, a member of Congress, an officer or employee of Congress, or an employee of a member of Congress in connection with any contract, grant, loan, or cooperative agreement, the Contractor shall complete and submit Standard Form-LLL, "Disclosure Form to Report Lobbying," in accordance with its instructions.
 - c. The Contractor shall require that the language of this certification be included in the award documents for all sub-awards at all tiers (including subcontracts, sub-grants, and contracts under grants, loans, and cooperative agreements) and that all subrecipients shall certify and disclose accordingly.

This certification is a material representation of fact upon which reliance was placed when this transaction was made or entered into and is a prerequisite for making or entering into this transaction imposed by 31 U.S.C. § 1352.

- E.10. Personally Identifiable Information. While performing its obligations under this Contract, Contractor may have access to Personally Identifiable Information held by the State ("PII"). For the purposes of this Contract, "PII" includes "Nonpublic Personal Information" as that term is defined in Title V of the Gramm-Leach-Bliley Act of 1999 or any successor federal statute, and the rules and regulations thereunder, all as may be amended or supplemented from time to time ("GLBA") and personally identifiable information and other data protected under any other applicable laws, rule or regulation of any jurisdiction relating to disclosure or use of personal information ("Privacy Laws"). Contractor agrees it shall not do or omit to do anything which would cause the State to be in breach of any Privacy Laws. Contractor shall, and shall cause its employees, agents and representatives to: (i) keep PII confidential and may use and disclose PII only as necessary to carry out those specific aspects of the purpose for which the PII was disclosed to Contractor and in accordance with this Contract, GLBA and Privacy Laws; and (ii) implement and maintain appropriate technical and organizational measures regarding information security to: (A) ensure the security and confidentiality of PII; (B) protect against any threats or hazards to the security or integrity of PII; and (C) prevent unauthorized access to or use of PII. Contractor shall immediately notify State: (1) of any disclosure or use of any PII by Contractor or any of its employees, agents and representatives in breach of this Contract; and (2) of any disclosure of any PII to Contractor or its employees, agents and representatives where the purpose of such disclosure is not known to Contractor or its employees, agents and representatives. The State reserves the right to review Contractor's policies and procedures used to maintain the security and confidentiality of PII and Contractor shall, and cause its employees, agents and representatives to, comply with all reasonable requests or directions from

the State to enable the State to verify and/or procure that Contractor is in full compliance with its obligations under this Contract in relation to PII. Upon termination or expiration of the Contract or at the State's direction at any time in its sole discretion, whichever is earlier, Contractor shall immediately return to the State any and all PII which it has received under this Contract and shall destroy all records of such PII.

The Contractor shall report to the State any instances of unauthorized access to or potential disclosure of PII in the custody or control of Contractor ("Unauthorized Disclosure") that come to the Contractor's attention. Any such report shall be made by the Contractor within twenty-four (24) hours after the Unauthorized Disclosure has come to the attention of the Contractor. Contractor shall take all necessary measures to halt any further Unauthorized Disclosures. The Contractor, at the sole discretion of the State, shall provide no cost credit monitoring services for individuals whose PII was affected by the Unauthorized Disclosure. The Contractor shall bear the cost of notification to all individuals affected by the Unauthorized Disclosure, including individual letters and public notice. The remedies set forth in this Section are not exclusive and are in addition to any claims or remedies available to this State under this Contract or otherwise available at law.

- E.11. **Survival.** The terms, provisions, representations, and warranties contained in this Contract which by their sense and context are intended to survive the performance and termination of this Contract, shall so survive the completion of performance and termination of this Contract.

IN WITNESS WHEREOF,

APPRISS, INC.:



11/29/18

CONTRACTOR SIGNATURE

DATE

ROBERT COHEN PRESIDENT, APPRIS HEALTH

PRINTED NAME AND TITLE OF CONTRACTOR SIGNATORY (above)

TENNESSEE DEPARTMENT OF HEALTH:

JOHN J. DREYZEHNER, MD, MPH, FACOEM, COMMISSIONER

DATE

ATTESTATION RE PERSONNEL USED IN CONTRACT PERFORMANCE

SUBJECT CONTRACT NUMBER:	
CONTRACTOR LEGAL ENTITY NAME:	Appriss Inc.
EDISON VENDOR IDENTIFICATION NUMBER:	121147

The Contractor, identified above, does hereby attest, certify, warrant, and assure that the Contractor shall not knowingly utilize the services of an illegal immigrant in the performance of this Contract and shall not knowingly utilize the services of any subcontractor who will utilize the services of an illegal immigrant in the performance of this Contract.

**CONTRACTOR SIGNATURE**

NOTICE: This attestation MUST be signed by an individual empowered to contractually bind the Contractor. Attach evidence documenting the individual's authority to contractually bind the Contractor, unless the signatory is the Contractor's chief executive or president.

Rob Cohen, President Appriss Health

PRINTED NAME AND TITLE OF SIGNATORY

11/29/18

DATE OF ATTESTATION